

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Adopting Egregious Cases Policy)	GN Docket No. 13-86
)	
)	

To: The Commission (filed through ECFS)

Reply Comments of WAMU

1. These Reply Comments are filed by American University, through its noncommercial educational radio station WAMU(FM) (“WAMU”),¹ Washington, DC, in support of the Comments submitted in this proceeding by National Public Radio, Inc. (“NPR”) on June 19, 2013. Like NPR, WAMU supports the Commission’s proposal to limit its enforcement of the broadcast regulations regarding indecent and profane content to “egregious cases”.

2. WAMU is the flagship affiliate of NPR in the nation’s capital. It has a primarily news and information format and attracts one of the largest audiences of any radio station in the Washington metro area. It not only provides an outlet for nationally-distributed NPR programming but also produces some of that national programming itself² and broadcasts large amounts of locally-produced content, including news, discussion, and call-in formats.³ WAMU is committed to its mission to provide well-produced, insightful, and meaningful content. It is also a strong proponent of First Amendment values. It believes that the proposed “egregious cases” approach to indecency and profanity enforcement will help give it the flexibility it needs

¹ WAMU is licensed to the Executive Committee of the Board of Trustees of The American University.

² *E.g.*, The Diane Rehm Show.

³ *E.g.*, The Kojo Nnamdi show.

to bring the sounds of the world directly to its listeners and allow it to fulfill its mission most effectively.

3. While WAMU does not typically broadcast content which would subject it to particularly harsh indecency scrutiny by the Commission, it is nonetheless burdened by overly vigorous enforcement of indecency regulations. WAMU does not seek to offend its listeners, but it does deal with important issues which can give rise to difficult, often heated, discussions. Particularly in the case of live news affairs programming, but also in discussion programming, WAMU cannot control every word uttered within range of its microphones. Commission regulation which can target even unintentional and spontaneous uses of profane or indecent language and subject WAMU to potential forfeitures and other administrative sanctions is a threat which casts a cloud of concern over program producers.

4. It is not just penalties for inadvertent profanity which hang over the head of WAMU under the current policy. Even when presenting a prerecorded story, WAMU may believe that potentially indecent audio best illustrates an important element of an event. WAMU's goal is always to provide listeners with the most accurate possible representation of reality, not content sanitized out of fear of government sanctions. Responsible licensees, not governmental officials, should be making content judgment calls that WAMU makes every day.

5. As an organization which actively exercises and takes seriously both its First Amendment rights and its responsibilities, WAMU strongly opposes any regulation that has the practical effect of censoring news and discussion. While it understands that censorship is not the Commission's intention, censorship in practical effect is nevertheless an unfortunate potential result of current policies.


6. It is not only the threat of a budget-busting forfeiture that burdens stations like WAMU. The administrative costs associated with complying with excessive content regulation are also significant, as are the costs of defending against an enforcement action. Even if a defense is successful, it consumes significant time and financial resources. Private journalists and editors should produce and make judgments about news and information content, with lawyers and government involved in only extreme cases.

7. WAMU supports the increased clarity and predictability which would come with the Commission's proposed "egregious cases" policy. The proposed change would make it easier to predict what sort of content might result in an enforcement action or delayed license renewal and would let WAMU's producers focus on their journalism jobs, not navigating a maze of enforcement risks. WAMU also agrees with NPR that the best policy would be for the Commission to create a safe harbor for news and public affairs programming, again freeing producers to be more effective in performing their work of informing and educating the public.

8. In sum, WAMU supports NPR's Comments and urges the Commission to move in the direction of limiting indecency enforcement to egregious cases, where broadcasters ignore or abuse indecency laws, not when they make *bona fide* journalistic judgments or fail to reach quickly enough for a "bleep" button when an objectionable word or phrase pops up unexpectedly.

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Respectfully submitted,


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